

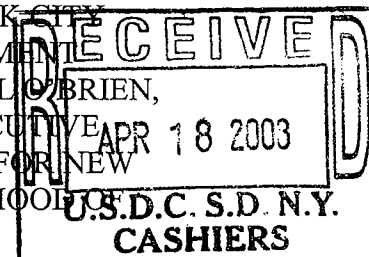
JUDICIAL DOCUMENTS  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS PENSION FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS WELFARE FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS VACATION FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS APPRENTICESHIP, JOURNEYMAN RETRAINING, EDUCATIONAL AND INDUSTRY FUND, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS CHARITY FUND, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA FUND and THE NEW YORK CITY AND VICINITY CARPENTERS LABOR MANAGEMENT CORPORATION, by MICHAEL J. FORDE, and PAUL O'BRIEN, as TRUSTEES, AND MICHAEL J. FORDE AS EXECUTIVE SECRETARY-TREASURER, DISTRICT COUNCIL FOR NEW YORK CITY AND VICINITY, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

08 CIV 37357

08 CV \_\_\_\_\_

COMPLAINT



Plaintiffs,

-against-

S&G FLOORING, INC.,

Defendant.

-----X

Plaintiffs, (hereinafter also referred to as "Benefit Funds"), by their attorneys O'Dwyer & Bernstein, LLP, for their Complaint allege as follows:

NATURE OF THE CASE

1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement ("Agreement") between The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and S&G Flooring, Inc. ("Employer").

JURISDICTION

2. This Court has subject matter jurisdiction over this proceeding pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

### **VENUE**

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

### **PARTIES**

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant S&G Flooring, Inc. is a domestic corporation incorporated under the laws of the State of New York with a principal place of business located at 47-14 32nd Place, Long Island City, NY 11101.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29

U.S.C. §1002 (5).

**FIRST CLAIM FOR RELIEF**

9. Defendant was bound at all relevant times by a collective bargaining agreement with the Union, which, by its terms, became effective July 1, 2001. Said Agreement provides, inter alia, that the defendant shall make monetary contributions to the Benefit Funds on the behalf of covered employees, and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with obligations under the Agreement to make contributions for employees in the bargaining unit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Robert Herzog, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing and rendered his award, in writing, dated October 4, 2007 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The arbitrator found that S&G Flooring, Inc. had failed to make contributions due to the Benefit Funds for the period January 19, 2005 through June 30, 2005, in the principal amount of \$157,091.55.

14. The arbitrator also found that S&G Flooring, Inc. was required to pay interest on the principal amount due at the rate of 10% per annum from the date of the award.

15. The defendant has failed to abide by the award.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

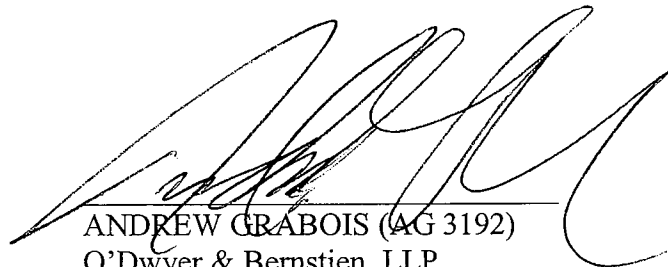
1. For an order confirming the arbitration award in all respects;

2. For entry of judgment in favor of the Plaintiffs and against S&G Flooring, Inc. in the principal amount of \$157,091.55, plus 10% interest per year from the date of the award to the date of entry of judgment;

3. For attorneys' fees and costs of this action;

4. For such other and further relief as this court may deem just and proper.

Dated: New York, New York  
April 18, 2008



ANDREW GRABOIS (AG 3192)  
O'Dwyer & Bernstein, LLP  
Attorneys for Plaintiffs  
52 Duane Street  
New York, NY 10007  
(212) 571-7100

# **EXHIBIT A**



# OFFICE OF THE IMPARTIAL ARBITRATOR

-----X  
In The Matter Of The Arbitration

between

New York City District Council of Carpenters  
Pension Fund, New York City District Council of  
Carpenters Welfare Fund, New York City  
District Council of Carpenters Vacation Fund,  
New York City District Council of Carpenters  
Annuity Fund, New York City District Council  
of Carpenters Apprenticeship, Journeyman  
Retraining, Educational and Industry Fund,  
New York City District Council of Carpenters  
Charity Fund, United Brotherhood of Carpenters  
and Joiners of America Fund and The New York  
City and Vicinity Carpenters Labor-Management  
Corporation, by Michael J. Forde and Paul  
O'Brien, as Trustees.

**DEFAULT**

**AWARD**

And

Michael J. Forde, as Executive Secretary-  
Treasurer, District Council for New York City  
and Vicinity, United Brotherhood of Carpenters  
and Joiners of America

(Petitioners)

-and-

S&G FLOORING INC.

(Employer)

-----X  
BEFORE: Robert Herzog, Esq.

S&G FLOORING INC. (hereinafter referred to as the "Employer")  
and the District Council of New York City and Vicinity of the United  
Brotherhood of Carpenters and Joiners of America are parties to an  
Independent Resilient Floor Coverers Collective Bargaining  
Agreement, dated July 1, 2001, providing for arbitration of disputes  
before the undersigned Arbitrator as Impartial Arbitrator, and in

which the Employer has therein agreed, for the duration of the Agreement, to pay contributions toward employee benefit funds (hereinafter collectively referred to as the "Funds"). The Petitioners, as beneficiaries of the Collective Bargaining Agreement, have standing before the Arbitrator. In accordance therewith, the Petitioners, by a September 13, 2007 Notice of Intention to Arbitrate, demanded arbitration. The Funds alleged the Employer failed to make sufficient benefit contributions to the Funds for the period of January 19, 2005 through June 30, 2005 as required by the Collective Bargaining Agreement.

A Notice of Hearing dated September 21, 2007 advised the Employer and the Petitioners that the arbitration hearing was scheduled for October 2, 2007.

The Notice of Hearing was sent to the Employer by regular and certified mail. The regular mail copy of the Notice of Hearing was not returned to sender and deemed delivered to the Employer. The certified mail copy of the Notice of Hearing was not returned as undeliverable. United States Postal Service records indicate that notice of certified mail was left with the Employer on September 24, 2007 at 1:10 pm. The Employer failed to heed the notice and claim the envelope. The Employer is deemed to have received the Notice of Hearing based on the delivery of the regular mail copy and the Employer's voluntary act of not claiming the certified mail copy.

On October 2, 2007, at the place and time designated by the September 21, 2007 Notice of Hearing, Steven Kasarda, Esq. appeared on behalf of the Petitioners. Despite the Employer having been sent notices of the proceeding and the claim against the Employer, no appearance on the Employer's behalf was made. Also, no written, mutually agreed upon waiver by the parties to adjourn the proceeding, as required by the Collective Bargaining Agreement, was presented. The arbitration proceeded as a Default Hearing. Full opportunity was afforded the parties present to be heard, to offer evidence, and to examine witnesses. The Petitioners thereupon presented their proofs to the Arbitrator.

The uncontroverted testimony and evidence established that:

- During the January 19, 2005 through June 30, 2005 period, the Employer was bound to a Collective Bargaining Agreement with the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America.
- The Collective Bargaining Agreement obligated the Employer to make certain payments to Fringe Benefit Trust Funds on behalf of all its resilient floor covering and related materials employees pursuant to schedules set forth in the Agreement.
- The Collective Bargaining Agreement authorized the Funds to conduct audits of the Employer's books and records in order to



verify that all the required contributions were made to each of the aforesaid Fringe Benefit Trust Funds maintained by the Funds.

- In accordance with this auditing provision, an accountant, employed by the Funds, and with the consent of the Employer, performed an audit of the Employer's books and records.

The testimony of the Funds' auditor, Mr. Neil Alexis, established that the audit of the Employer's books and records uncovered delinquencies in the amount of contributions due the Funds during the period of January 19, 2005 through June 30, 2005. The testimony further revealed that a copy of the Audit Summary Report had been forwarded to the Employer. Thereafter, the Funds demanded payment by the Employer. When the Employer failed to comply with the payment demand, the Notice of Intent to Arbitrate issued.

Auditor Alexis' testimony set forth the accounting method employed during the course of the audit and the computation of the amount of each alleged delinquency. The total amount of the delinquency for the January 19, 2005 through June 30, 2005 period was one hundred thousand three hundred thirty-eight dollars and sixty-six cents (\$100,338.66). The Petitioners requested an award for contributions owed, interest, liquidated damages, late payment interest, promotional fund assessment, audit and counsel fees, arbitration and court costs as provided for by the Collective Bargaining Agreement. Testimony computing these amounts was received into evidence.

AWARD

Based upon the substantial and credible evidence of the case as a whole:

1. S&G FLOORING INC. is delinquent in its Fringe Benefit payments due and owing to the Funds under the terms of the Collective Bargaining Agreement;
2. S&G FLOORING INC. shall pay to the Funds forthwith the said delinquency amount, interest on said delinquency amount, liquidated damages, late payment interest, the promotional fund assessment, the Funds' audit and counsel's fees, the undersigned Arbitrator's fee, and all associated court costs in the following amounts:

Principal Due	\$100,338.66
Interest Due	25,787.83
Liquidated Damages	25,787.83
Late Payment Interest	90.83
Promotional Fund	1,261.40
Court Costs	375.00
Audit Costs	1,450.00
Attorney's Fee	1,500.00
Arbitrator's Fee	500.00
TOTAL	\$157,091.55

3. S&G FLOORING INC. shall pay to the District Council Carpenters Benefit Funds the aggregate amount of one hundred fifty-seven thousand ninety-one dollars and fifty-five cents

(\$157,091.55) with interest to accrue at the rate of 10% from  
the date of this Award.

  
Robert Herzog  
Arbitrator

Dated: October 4, 2007

State of New York )  
County of Rockland )

I, Robert Herzog, do hereby affirm upon my oath as Arbitrator  
that I am the individual described in and who executed this  
instrument, which is my Award.

  
Robert Herzog  
Arbitrator

Dated: October 4, 2007

To: S&G FLOORING INC.  
Attn: Mr. Stephen Drago, President  
47-14 32<sup>nd</sup> Place  
Long Island City, New York 11101

Steven Kasarda, Esq.  
New York City District Council Carpenters Benefit Funds  
395 Hudson Street  
New York, New York 10014